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U.S. Citizenship  
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MAY 25 2004

FILE:

EAC 03 169 50849

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary

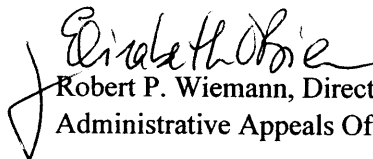
PETITION:

Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, finding that the petitioner failed to establish that she has resided with the citizen spouse and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in pertinent part:

*Good Faith Marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

On the Form I-360, the petitioner indicated that she last entered the United States on June 4, 1990 without inspection. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on May 29, 1996 in Perth Amboy, New Jersey. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The District Director, Newark, New Jersey, denied the Form I-130 petition. On October 31, 2002, the petitioner filed a self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she has resided with her citizen spouse, and entered into the marriage to the citizen in good faith. Because the petitioner furnished insufficient evidence to establish that she has met these requirements, she was requested on July 14, 2003 to submit additional evidence. The director listed evidence the petitioner could submit to establish that she had resided with her spouse, and that she married her spouse in good faith.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner submits additional documentation.

In review, the evidence is insufficient to establish that the petitioner resided with her citizen spouse and entered into the marriage in good faith. The additional evidence consists of the following:

- The petitioner's statement dated September 9, 2003.
- Comcast Cablevision receipts dated March 10, 2003 and March 31, 2003 in the citizen spouse's name showing an address of [REDACTED]
- Comcast Cablevision bills dated December 5, 2002, January 22, 2003, and March 22, 2003 addressed to the citizen spouse at [REDACTED]
- Verizon statement dated October 31, 2002 addressed to the citizen spouse at [REDACTED]

- Bell Atlantic Notice of Suspension dated October 4, 1999 addressed to the citizen spouse at [REDACTED]
- Bell Atlantic bill dated February 28, 1998 addressed to the citizen spouse at [REDACTED]
- The petitioner's notice of change of address dated June 15, 1998 from [REDACTED]

On the Form I-360, the petitioner indicated that as of October 28, 2002, she resided at [REDACTED] and that she resided with her citizen spouse from May 1996 until September 2000. On a sworn affidavit dated September 2002, the petitioner indicated that she stopped living with her husband in 2000. This is inconsistent with the information she provided CIS in her notice of change of address effective June 15, 1998 and the evidence listed above. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is noted that the petitioner failed to submit evidence such as joint leases, mortgages or rental agreements. She failed to submit insurance policies or bank statements reflecting commingled assets and listing a common address for the petitioner and her spouse. She failed to submit affidavits of friends and family who could have verified that she had resided with her spouse and that she entered into the marriage in good faith.

The petitioner failed to overcome the director's objections to approving the petition.

Beyond the director's decision, the petitioner has not established that she was battered by or subjected to extreme cruelty by her citizen spouse. The petitioner submitted her own statement and that of a friend as evidence of the abuse she suffered. In her statement, the petitioner stated that her husband came home drunk, in a bad mood, and started fights. She said that her husband did not allow her to leave the house and restricted phone calls to and from the petitioner. She stated that "saying that he mistreated me physical [sic] it is a lie but some times he slapped [sic] me and yield to me." In a statement, the petitioner's friend indicated that the petitioner had told her that her husband had threatened to report the petitioner to immigration. In review, the statements are too vague to establish that the petitioner was battered by or suffered extreme cruelty by her citizen spouse. It is noted that the petitioner failed to provide CIS with reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers or other social service agency personnel. She failed to submit evidence that she sought refuge in a shelter for the abused. She failed to obtain an order for protection. The petitioner failed to establish that she was battered by or subjected to extreme cruelty by her citizen spouse. For this additional reason, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.